



14 JAN 2009

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

CASELLA & HESPOS
274 MADISON AVENUE
NEW YORK NY 10016

In re Application of :
KOIKE, Tohru, et al. :
U.S. Application No.: 10/575,714 :
PCT Application No.: PCT/JP2004/015347 :
International Filing Date: 12 October 2004 :
Priority Date: 16 October 2003 :
Attorney's Docket No.: F04-018US :
For: METHOD FOR MEASURING A :
SURFACE PLASMON RESONANCE :
AND NOBLE METAL COMPOUND :
USED FOR THE SAME :
:

DECISION ON PETITION
(37 CFR 1.182)

This decision is issued in response to applicants' "Request To Correct Transmittal Letter" filed 23 September 2008, treated herein as a petition under 37 CFR 1.182. Pursuant to the authorization contained in the Form PTO-1390 filed with such petition, Deposit Account No. 03-1030 will be charged the required \$400 petition fee.

BACKGROUND

On 12 October 2004, applicants filed international application PCT/JP2004/015347. The international application claimed a priority date of 16 October 2003, and it designated the United States. On 28 April 2005, the International Bureau (IB) communicated a copy of the international application to the United States Patent and Trademark Office (USPTO). The deadline for submission of the basic national fee was thirty months from the priority date, i.e., 16 April 2006.

On 12 April 2006, applicants filed papers to initiate a U.S. national stage application. This submission included, among other materials, a Transmittal Letter (Form PTO-1390), an application data sheet (ADS), an English translation of PCT/JP2004/015347, and payment of the basic national fee.

The ADS filed 12 April 2006 specifically identify the international application number as PCT/JP2004/015347. However, the Form PTO-1390 Transmittal Letter filed on 12 April 2006 identified the international application as PCT/JP2004/015437.

On 08 May 2006, applicants filed a declaration executing international application number PCT/JP2004/015347, accompanied by the surcharge for filing the declaration later than thirty months after the priority date.

On 15 September 2008, the United States Designated Elected Office (DO/EO/US) mailed a “Notification Of Missing Requirements” (Form PCT/DO/EO/905) requiring submission of an oath or declaration in compliance with 37 CFR 1.497. The Notification indicated that the declaration submitted on 08 May 2006 was defective in that the inventors listed thereon did not correspond to those set forth on the international application.

On 23 September 2008, applicants filed the “Request To Correct Transmittal Letter” considered herein as a petition under 37 CFR 1.182. The petition confirms that the correct international application number is PCT/JP2004/015347, indicates that the listing of international application number PCT/JP2004/015437 in the original PTO-1390 was an error, and requests correction of the applicable international application number to PCT/JP2004/015347.

DISCUSSION

As set forth above, the Form PTO-1390 filed by applicants to initiate this national stage application incorrectly identified the international application to which the present national stage filing was directed. Correction of this error is required before the materials filed 12 April 2006 can be treated as having been directed to international application PCT/JP2004/015347, as necessary to avoid abandonment of this international application with respect to the United States. The correction of such an error by the applicant requires a grantable petition under 37 CFR 1.182. Accordingly, applicants’ “Request To Correct Transmittal Letter,” which requests correction of the international application number, has been treated as such a petition.

The present petition confirms that the incorrect listing of international application number PCT/JP2004/15437 in the original Form PTO-1390 was the result of an error (“two numbers transposed”), and it confirms that the correct international application number is PCT/JP2004/15347. A review of the materials included with the original application submission confirms that the correct international application number, PCT/JP2004/15347 was indicated therein (specifically, on the ADS). In addition, applicants have provided the authorization to charge Deposit Account No. 03-1030 for required fees; based on this authorization, applicants will be charged the required petition fee.

The present submission satisfies the requirements for a grantable petition to correct the inadvertent inconsistency in the international application number identified in the original application papers. Accordingly, the materials filed herein on 12 April 2006 will be treated as directed to international application PCT/JP2004/0015347.

It is noted that, based on this correction, the inventors listed on the declaration filed 08 May 2006 are no longer inconsistent with the inventors listed on the applicable international application. The Notification of Missing Requirements mailed 15 September 2008, based as it was on the purported inconsistency between the inventors named on the declaration and those named on the international application, is appropriately vacated.

CONCLUSION

Applicants’ petition under 37 CFR 1.182 is **GRANTED**.

The materials filed herein on 12 April 2006, including the basic national fee payment, will be treated as the U.S. national stage of PCT/JP2004/015347.

Deposit Account No. 03-1030 will be charged the required \$400 petition fee.

The Notification Of Missing Requirements (Form PCT/DO/EO/905) mailed 15 September 2008 is hereby **VACATED**.

The application is being referred to the National Stage Processing Branch of the Office of PCT Operations for further processing in accordance with this decision. The date under 35 U.S.C. 371(c)(1), (c)(2), and (c)(4) is 08 May 2006.



Richard M. Ross
Attorney Advisor
Office of PCT Legal Administration
Telephone: (571) 272-3296
Facsimile: (571) 273-0459